

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

**CONSOLIDATED REPLY OF THE
INMATE CALLING SERVICE PROVIDERS COALITION**

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Attorneys for the Inmate Calling Service
Providers Coalition

July 14, 1997

024

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

**CONSOLIDATED REPLY OF THE
INMATE CALLING SERVICE PROVIDERS COALITION**

Pursuant to Section 1.115(f)(1) of the Commission's Rules, 47 C.F.R. § 1.115(f)(1), the Inmate Calling Service Providers Coalition ("ICSPC") hereby replies jointly to the RBOC Payphone Coalition's Comments On and Opposition to Applications for Review of the Payphone CEI Plan ("RBOC Opposition") and the Opposition of Ameritech to Applications to Review ("Ameritech Opposition"), both filed on June 30, 1997 against ICSPC's May 15, 1997 Consolidated Application for Review of the CEI Orders ("Application for Review").

In its Application for Review, ICSPC demonstrated that each of the Common Carrier Bureau's several orders approving the BOCs' payphone CEI plans (the "CEI Orders")¹ suffered from the same basic infirmity with respect to inmate calling services ("ICS") in that they failed to correctly define nonregulated ICS to include the provision of

¹ In the interest of conserving space, the citations to the orders are omitted from this reply.

"inmate telephone *service*," as opposed to the mere provision of equipment, as required by Section 276 of the Communications Act of 1934, as amended, 47 U.S.C. § 276(d) (emphasis added). As a consequence of this failure to correctly and coherently define ICS, the Bureau was unable to properly evaluate the BOC CEI plans to determine the manner in which each BOC provides regulated network services to support their ICS operations and, consequently, to determine whether the BOCs are making such support available to independent ICS providers on a nondiscriminatory basis. In addition, the Bureau affirmatively approved several BOCs' CEI plans despite clear evidence that these BOCs were treating ICS expenses and revenues as "regulated" in violation of Section 276. Therefore, ICSPC argued that the Commission must require each BOC to refile its CEI plan, correctly describing (1) the regulated and nonregulated elements of its ICS operations and (2) the manner in which the BOC will provide nondiscriminatory interconnection to the regulated functions used by its nonregulated ICS.

In their oppositions, the RBOC Coalition as well as Ameritech conceded that several BOCs do in fact treat revenue, expenses and uncollectibles associated with inmate collect calling as regulated. It is obvious from both the RBOC Opposition and the Ameritech Opposition that the BOCs fundamentally misunderstand what Section 276 and the Commission's implementing order² required of them.

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order").

DISCUSSION

I. Section 276's Mandate that the Commission End the BOCs' Subsidization and Discrimination in Favor of Their ICS Operations Is Rendered Meaningless If Nonregulated ICS Is Defined to Exclude Inmate Collect Calling

In its discussion of ICSPC's Application for Review, the RBOC Coalition mocks ICSPC for arguing that "some BOCs have failed to deregulate their inmate calling *services*," rather than merely the underlying equipment, as if the very notion were absurd. RBOC Opposition at 18-19. According to the BOCs, Section 276 required only the provision of the underlying inmate CPE to be reclassified as nonregulated. Yet both the purpose and express language of Section 276 make clear that the BOCs must remove from regulation their entire ICS operations, including the revenues and uncollectibles associated with inmate collect calling.

In Section 276, Congress directed the FCC to end all subsidization and discrimination by the BOCs in favor of their "payphone services." 47 U.S.C. § 276(a). Specifically, Congress required the Commission to prescribe regulations to "discontinue . . . all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues." 47 U.S.C. § 276(b)(1)(B). Congress expressly defined "payphone service" to include the "provision of inmate telephone *service* in correctional institutions, and any ancillary services." 47 U.S.C. 276(d) (emphasis added). Thus, according to the express language of the statute, a BOC may not subsidize or discriminate in favor of its inmate calling *services* any more than its inmate calling *equipment*.

In order to carry out its Congressional mandate, the Commission required the BOCs to reclassify their payphone operations as nonregulated. Payphone Order at 20621. As a threshold matter, the Commission ordered that the BOCs' payphone equipment be reclassified as nonregulated CPE. However, simply removing the underlying equipment from the rate base does not prevent the continued subsidization of the BOCs' ICS operations by regulated network operations. As the Commission made clear in its accounting safeguards proceeding, "[t]he Commission reclassified pay telephone service as a nonregulated *service* in the [Payphone Order]. As a result, carriers must apportion payphone *service* costs to nonregulated and common cost pools." Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-150, FCC 96-490, released December 24, 1996, ¶ 100 (emphasis added).

II. The Commission Must Require Each of the BOCs to Revise Their CEI Plans to Reflect Proper Treatment of ICS

A. Bell Atlantic

Bell Atlantic presents the clearest example of the BOCs' misunderstanding of Section 276. The RBOC Coalition states clearly that, in the majority of the correctional facilities that Bell Atlantic serves, all of the call control and call processing functions associated with inmate collect calling are performed in dedicated nonregulated inmate CPE. The CPE handles the querying of validation data bases, the querying of the called party to obtain acceptance of collect calling charges, and the generation of the call record

used for billing purposes. RBOC Opposition at 20-21. The only function provided by Bell Atlantic's network operations is the transmission of an ordinary 1+ call. Yet Bell Atlantic unabashedly states that it treats "[inmate collect calling] store-and-forward calls as normal, regulated calls." RBOC Opposition at 21. Even more incredible is Bell Atlantic's admission that its regulated operations fully bear the risk of uncollectibles,³ resulting in precisely the form of subsidy of Bell Atlantic's ICS that Congress sought to prohibit in enacting Section 276.

According to Bell Atlantic, this treatment is permissible because "the payphone orders do not require the deregulation of collect calling or operator services, either in whole or in part. Instead, they require the deregulation only of facilities associated with payphone services." *Id.* This reading of the Payphone Order is both irrational and wrong.

If Bell Atlantic's interpretation were correct, then the Commission's determination that all ICS equipment must be nonregulated would be rendered meaningless. Essentially, in Bell Atlantic's view, the BOCs are free to perform all call control and call processing functions of ICS in nonregulated CPE, and then to classify all the associated expenses and revenues as *regulated*, merely because the call has traversed Bell Atlantic's network in order to reach its destination.

This treatment of inmate collect calling flies directly in the face of Section 276. Section 276 directed the Commission to put into place nonstructural safeguards to ensure that the BOCs can no longer continue their historical practices of subsidizing their own

³ RBOC Opposition at 23 ("the OSP rather than the PSP bears the risk of fraud or non-payment").

"inmate telephone service" with revenue from regulated operations and of discriminating against independent ICS providers. 47 U.S.C. § 276(b)(1)(C), (d). The focus clearly was on the BOCs' inmate telephone *service* business, not merely the underlying *equipment*. Congress intended that the BOCs' inmate telephone *service* operations be cut off from all subsidies and discrimination by the BOCs' regulated services, so that the BOCs' would be forced to compete in the provision of inmate telephone *service* on a level playing field with independent ICS providers.

This is especially important because, as discussed in ICSPC's Application for Review, one of the critical differences between ICS and other services is the high proportion of "bad debt" associated with ICS due to uncollectible calls. If a BOC's nonregulated ICS operation does not assume the responsibility and risk associated with billing and collecting the revenue for inmates' collect calls, then its ICS operation will continue to benefit impermissibly from major subsidies and discrimination by the BOC's regulated operations.

The RBOC Coalition contends that the ICSPC "is demanding that Bell Atlantic adopt a business structure of the Inmate Coalition's choosing." RBOC Opposition, 22. That is not at all the case. The ICSPC supports Bell Atlantic's freedom to adopt any business model that it wishes, so long as the costs of its inmate collect calling service and uncollectibles are not commingled with regulated local exchange service operations, where they will continue to benefit from subsidies and discrimination in violation of Section 276.

B. NYNEX and U S West

NYNEX and U S West both state that "inmate collect calls are handled like any other collect call." See RBOC Opposition at 23 (NYNEX), 24 (U S West). However, as NYNEX and U S West continue to provide no real detail about how they conduct their ICS operations, it is impossible to determine what this means. If NYNEX and U S West are operating under Bell Atlantic's model and are performing the call control and call processing functions in dedicated inmate CPE and sending the call to the network as a I+ call, then their operations are clearly impermissible for the same reasons as Bell Atlantic's.

If instead, as both seem to imply, they are handling the inmate call processing functions in the network, then there is still no justification for treating the associated and uncollectible revenue as regulated. Since ICS must be defined as nonregulated, network operator functions that are used to provide nonregulated ICS must be provided to the BOCs' nonregulated entity (and offered to independent ICS providers) under tariff.

C. Ameritech

Ameritech's opposition is similar to the RBOC Coalition's response on behalf of NYNEX and U S West except that Ameritech specifically acknowledges that the calls are "handed off to Ameritech's network-based operator services system." Ameritech Opposition at 2.

Since the operator service functions are performed in Ameritech's network and since Ameritech makes no mention of its ICS operations purchasing the call-processing

functionality from its network operator services under tariff, the inmate operation is still benefiting impermissibly from subsidies and discrimination.

D. BellSouth, Southwestern Bell, Pacific Bell and Nevada Bell

The RBOC Coalition is correct that ICSPC believes that BellSouth and Southwestern Bell appear to be defining the provision of inmate collect calling service correctly, as part of their nonregulated ICS operation. However, it does not follow, as the RBOC Coalition contends, that their respective CEI plans need not be revised to explain how they are conducting their operations. Unless BellSouth and Southwestern Bell are required to spell out in detail exactly how they are performing their ICS functions there is no way to be sure that there are no unlawful subsidies and that independent ICS providers are being provided equal interconnection to any network functionality being provided to BellSouth and Southwestern Bell's ICS operations.

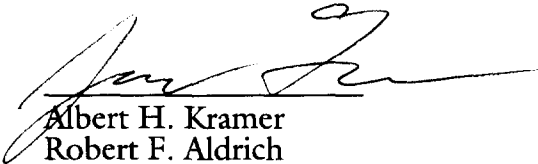
With respect to Pacific Bell and Nevada Bell, the RBOC Coalition states for the first time that Pacific Bell and Nevada Bell are uniformly using the same "method of handling inmate calls used by BellSouth and [Southwestern Bell]." RBOC Opposition, 24. As with BellSouth and Southwestern Bell, there is no way to verify this unless the Commission requires Pacific Bell and Nevada Bell to refile their CEI plans to explain in detail how they are handling inmate collect calls.

CONCLUSION

The Commission must require the BOCs to remove their ICS businesses in their entirety from regulation as Congress intended. The Commission must therefore require each BOC to refile its CEI plan, correctly describing (1) the regulated and nonregulated elements of its ICS operations and (2) the manner in which the BOC will provide nondiscriminatory interconnection to the regulated functions used by its nonregulated ICS.

Dated: July 14, 1997

Respectfully submitted,



Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Attorneys for the Inmate Calling Service
Providers Coalition

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 1997, I caused a copy of the foregoing Consolidated Reply of the Inmate Calling Service Providers Coalition to be sent by first class mail, postage prepaid, to:

A. Richard Metzger, Jr.*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Mary Beth Richards*
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

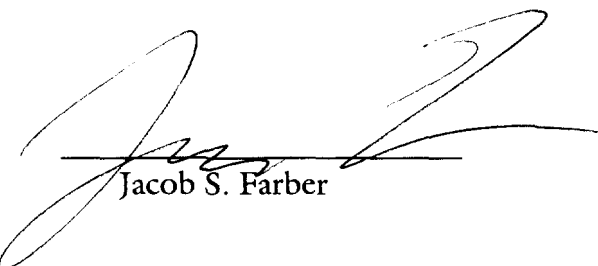
Richard Welch, Chief*
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Michael C. Carowitz*
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 6008
Washington, DC 20554

ITS*
1231 20th Street, N.W.
Suite 102
Washington, DC 20037

Frank Michael Panek
Michael S. Pabian
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Janice Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554



Jacob S. Farber

*By hand delivery